

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

R.S. individually, and o/b/o T.F., a minor,

Plaintiff,

v.

RIVER VALE BOARD OF EDUCATION,

Defendant.

Civil Docket No. 05-5968
Hon. Faith S. Hochberg, U.S.D.J.

OPINION & ORDER

Date: September 21, 2006

HOCHBERG, District Judge:

This matter having come before the Court upon the parties' Cross Motions for Summary Judgment; and the Court having considered the arguments of the parties on the papers pursuant to Fed. R. Civ. P. 78; and

it appearing that, pursuant to Fed. R. Civ. P. 56(c), a motion for summary judgment will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); and

it appearing that "summary judgment may be granted only if there exists no genuine issue of material fact that would permit a reasonable jury to find for the nonmoving party." Miller v. Indiana Hosp., 843 F.2d 139, 143 (3d Cir. 1988); and

it appearing on the face of the papers filed to date that both sides dispute the timing of Defendant's offer to pay the educational expenses associated with T.F.'s residential placement; and

it appearing that this is a question of material fact that exists with respect to the claims at issue, making this case unsuitable for summary judgment; and

IT IS on this 21st day of September, 2006,

ORDERED that Defendant's Motion for Summary Judgment is **DENIED**; and

ORDERED that Plaintiff's Cross-Motion for Summary Judgment is **DENIED**; and

ORDERED that the parties shall appear in court at 2:00 pm on October 10, 2006 for a bench trial on this matter. Each party will have no more than one hour to present its case; that hour may be divided as each party sees fit to address the issues of liability and damages. It is not necessary for either party to submit trial briefs or memorandum.

/s/ Faith S. Hochberg
Hon. Faith S. Hochberg, U.S.D.J.